brated case of *Millar* v. *Taylor*, 4 Burr. 2303, it was decided that at least after the statute 8 Anne, c. 19, which gave the author a copyright for a limited term of years, the effect of publication was to deprive him of this common-law copyright. The doctrine of this case has always been received with favor in America. The question as to what constitutes publication, however, still remains unsettled in many respects, as is shown by a recent case in the New York Court of Appeals. *Jewelers' Mercantile Agency* v. *Jewelers' Weekly Publishing Co.* (reported in the New York Law Journal, March 16). In this case the plaintiffs collected information concerning the jewelry trade, and printed it in books, which they distributed by lending them to all those who chose to subscribe for them under certain conditions. These conditions were that the subscriber should only have the use of the book for one year, should return it to the plaintiff at the end of that period, and should keep all information contained in it confidential. The defendants subscribed for the book and then published a part of its contents. The plaintiffs thereupon seek an injunction against such a publication as an infringement of their common-law copyright.

The plaintiffs had taken steps to secure a copyright under the United States statute, and had already deposited two copies, as required by law, in the office of the Librarian of Congress. Three out of seven judges consider that this deposit amounted to a publication of the book, whether or not the copyright under the statute was finally secured. As the deposit of the copies in the library made their contents accessible to the public, free at least from any control by the author, this view seems correct, and is a sufficient ground for the decision of the case in favor of the defendant. The result is reached by the majority of the court, however, by a different course of reasoning. They say that the distribution of copies of this book, whether by way of sale or loan, without any limit except the willingness of the public to subscribe for it under the terms offered, amounted in substance to a publication; and to recognize the common-law right of property as still existing offers an easy means by which the owners of a book may enjoy the profits of publication without giving up their perpetual exclusive rights in the work. It would seem, nevertheless, that the distribution in this case, however extensive it may have been, differed essentially from publication by putting on sale; the book was never intended to circulate at all; it was to be used only by those who took it directly from the proprietor and under his control. And if the owner of a piece of literary property can by any such scheme make a profit out of it, without clearly giving up his common-law copyright, there seems to be little reason for preventing him from doing so. It is hard enough for an author, in ordinary case of publication, to be compelled to exchange his perpetual unlimited right for a limited statutory right before he can make use of almost his only means of getting any advantage from the result of his labor.

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SUBSTANTIVE LAW UNDER THE GUISE OF EVIDENCE. — The ordinary party to an action, if he feels that justice has been done, especially if it inclines to his side, generally accepts the final decision as being the sole matter of interest to him. It is not so with the judicial mind, to which the correctness of the result is of no greater interest than the principles on which that result rests. A decision recently handed down by the United States Supreme Court in the case of *Richmond & Alleghany R. R.*

v. *R. A. Patterson Tobacco Co.* (18 Sup. Ct. Rep. 335) is interesting from both these points of view. A statute of Virginia declares that a carrier who accepts goods for transportation to a point beyond his own route is responsible for them as a common carrier, unless he shall have contracted in writing that beyond the terminus of his own line he is to be responsible only as a forwarding agent. The court holds that such a statute merely lays down a rule of evidence, and does not so infringe the right of the carrier to limit his liability by contract as to amount to a regulation of interstate commerce.

The substantial justice of this class of decisions has been recently touched upon. See 11 HARVARD LAW REVIEW, 544. Turning, however, to the other aspect of the question, can it be said as a matter of principle that the true *ratio decidendi* is that which is intimated by the court? It is true that it is commonly said of the clauses in the Statute of Frauds and similar statutes that the requirements laid down by them are those of the law of evidence. It may, perhaps, be questioned whether this is not "obscuring the difference between substance and form;" and whether it would not possibly be more correct on principle to say that these are simply cases of substantive law, couched sometimes, for the sake of convenience, in terms of evidence. To draw an illustration from another field of law, it could hardly be maintained that the requirement of a seal for a covenant or of witnesses for a will belongs to the law of evidence. The requirement is simply a rule of substantive law that a document without a seal is not a covenant, or without witnesses is not a will. It is readily conceivable that there might be an abundance of probative matter by which the agreement of the parties in the one case, or the desires of the deceased in the other, could be established beyond cavil. The proof might be wholly unobjectionable on any of the laws of evidence; and yet all this endeavor would be in vain, not because of any law of evidence, but because the law in regard to instruments makes it necessary that a deed should have a seal and a will witnesses, and these documents do not fulfil the requirements. Similarly in the present case; the real difficulty that the appellant encountered was not that he could not establish what had been agreed upon, but that because of the substantive law of Virginia in regard to carriers the agreement would not do him any good when he had established it; his trouble is "that he is trying to do something which is legally inadmissible, not that he is trying to do a permissible thing by means of evidence which is objectionable."

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RESTRAINTS ON ALIENATION BY MARRIED WOMEN. — The recent case of *Brown* v. *McGill*, 39 Atl. Rep. 613, in the Court of Appeals of Maryland, affords an excellent test of the principle upon which the law allows restraints on the alienation of a married woman's separate estate. A *feme sole* in contemplation of marriage settled her own property upon a trustee in trust for herself for life, for her separate use, without power of anticipation. The court decided that this restraint upon alienation was ineffective, it being against public policy to allow a woman thus to place her own property beyond the reach of those who should subsequently become her creditors. Even when, as in Maryland, spendthrift trusts are tolerated, it is well settled that they will not be allowed where the